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LAW ASPECT OF "LET THE PRODUCER AWARE" PRINCIPLES RELATED TO CONSUMER PROTECTION LAW IN INDONESIA

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Abstract

Changes in the legal construction begin with a paradigmatic shift in the relationship between the consumer and businesses, as reflected in the preference of *let the producer aware* principle in favor of letting the buyer aware principle. This study aims to find out the implication of the *let the producer aware* principle for goods and services, and its development in consumer protection law in Indonesia and to find out the legal system of Indonesia adopts the *let the producer aware* principle in order to protect Indonesian consumers. The research method applied in this study is normative juridical approach. The data obtained from the study of literature which is used as secondary data. Furthermore, interviews were conducted to obtain primary data, and then the data were analyzed by juridical qualitative method. As a result of analysis, it shows that firstly: the implementation of *let the producer aware* principle in Indonesia has not been properly conducted because of the common perception that consumers' opinion is less valuable than producers'. Secondly, the adoption of the *let the producer aware* principle for consumer protection by Indonesian Legal policy is shown by Law Number 8 Year 1999 about Consumer Protection (Indonesian Consumer Protection Act), which is based on the principle of fault liability, utilizing reversed burden of proof. This way, both parties are protected, because it proportionally distributes the liability to each party. In conclusion, both producers and consumers are equally protected on condition that they can provide evidence of the losses obtained.

Keywords: caveat venditor, consumer protection laws

1. INTRODUCTION

Recent development in industrial technology has strongly differentiated the lifestyle of modern society from the traditional one (Zaid, 1980). In traditional society, the production of goods undergoes simple processes. This simplistic nature appears in the interaction between consumers and producers in a traditional society, coming in form of a direct interface between consumers and producers. Meanwhile, in modern society, goods are being produced massively (*mass consumer consumption*), accentuating the different positions occupied by consumers and producers.

Indonesian consumer protection law is based on numerous principles applied to both consumers and producers, which are the principle of use, fairness, balance, security and safety, and the legal assurance principles. Consumer protection in Indonesia is absolutely necessary to provide protection to community and

create balance between businesses to consumer. Efforts to improve consumer protection by performing change UUPK, strengthening consumer protection agency, providing consumer education and commitment to the establishment of laws and regulations that protect consumers (Doly, 2012). The security and safety principle demands that in using, utilizing, or consuming goods/services, consumers' safety and security are to be guaranteed. Safety and security for human is among the basic rights. Although, how this right is being regarded differs from one person to another. Mostly, such difference is based on the consumer's income and personal consideration. In third-world countries (including Indonesia), whose majority of citizens are still unaware of their right to safety and security, it is often ignored and disregarded. By this susceptible nature of Indonesian consumers, the Indonesian Consumer Protection Act considers it necessary to outline a set of ethics and rules for producers to guarantee the safety and security of the consumers. In later

implementation, however, it requires the cooperation of many parties, especially the government, to intensively control the enforcement of the rules (Dirjen Perdagangan Dalam Negeri Departemen Perindustrian dan Perdagangan, 2001). Factors affecting the effectiveness of the Consumer Protection Act are; The government is less responsive to the development of the community in electronic transactions, there are no regulations that technically provide consumers with protection against online transactions, businesses and consumers do not understand their rights and obligations (Nugrahaningsih & Erlinawati, 2017).

Article 33 and 34 of the 1945 Constitution is the constitutional basis of the economic development of Indonesia. The development of economic trade, as a prioritized sector in national development, has the goal to hasten the economic recovery. One of its concrete implementation is the alignment from producers towards consumers (Shofie, 2000). For its fulfillment, the formulation of laws that could effectively protect consumers is necessary.

Law is itself not only a set of norms or principles. It also shapes processes and bodies in order to enforce the implementation of those norms in a society (Kusumaatmadja, 2002). In this regard, the consumer protection law concern not only the norms formulated in the law, but also other elements related to it. Indonesian Consumer Protection Act is designed to make Indonesian consumers more independent and conscious of their rights and duties (Direktorat Perlindungan Konsumen, 2003). Due to the economically and socially susceptible nature of the consumers, the Indonesian Consumer Protection Act considers it necessary to outline the ethics and rules regulating the producers to guarantee the safety and security of their consumers. Participation of other parties, especially the government, is necessary in terms of its authority to create a set of rules and to intensively exercise control on the enforcement of those rules (Direktorat Perlindungan Konsumen, 2001).

Before the formulation of the Indonesian Consumer Protection Act, producers provide less to no attention to the consumer protection law and its enforcement. This has been allowed to happen by irresponsible law enforcers, also by business consideration that the

price of a product could become uncompetitive. In the implementation of the Indonesian Consumer Protection Act, such mentality has to be left by the producers, because in developed countries where law supremacy has been truly realized, the producers is the one suffering from financial or moral loss when they fail to obey the rules regulating consumer protection.

In Indonesia, Indonesian Consumer Protection Act is not only legislation for the protection of consumers, but also a method to enforce business ethics among business owners. Considering the liabilities contained within the Indonesian Consumer Protection Act, the consequence for the liable business owners who violate the consumer protection law is not only limited to material or financial loss, but also imprisonment as dictated by the law.

The business owners have to be responsible of their transactions. The term "responsibility" means a consideration on values and social equality in general, based on both social and moral aspects (Saefullah, 1995). Throughout the course history, it has been shown that the loss suffered by the consumers of goods and services, are often caused by producers and business owners. Thus, it is natural that the activists of consumer protection demand the punishment of the liable producers. In Previous research conducted by (Mansyur & Rahman, 2015) shows that the production quality standardization aims to improve consumer protection and to realize smooth trade and a healthy business climate, embody the fulfillment of the rights of consumers, and improve the quality of prodak grade.

The liability principle is an important element in the consumer protection law. It requires a great deal of care in analyzing the cases of consumers' rights violation; especially in charging which party to take responsibility and the degree of punishment appropriate to be enforced. Several formal sources such as the legislation and standard agreement in civil law tend to limit responsibility to be taken by the violator of consumers' rights. Law in general differentiates principles related to liability into: liability based on fault; presumption of liability; presumption of non-liability; strict liability; and limitation of liability.

As explained before, the rapid development of industrial technology has implicated to a more complex economic system, which, as a consequence,

demands a change of legal construction on the interaction of consumers and producers. The change in legal construction is marked with a paradigmatic shift of the interaction between consumers and producers, which replaces the *let the buyer aware* principle with *let the producer aware* principle. In other words, the paradigmatic shift is a change of priority in liability. If before the consumers are liable to their own safety and security, now the liability is for the producers to hold. Based on such principle, the producers should ensure the safety of their products before marketing them. However, there are still numerous accounts of careless practices of producers that disregard the principle. Such is shown by cases of hidden defects being found in products, or even false "Halal" labeling on products possessing no actual certificate from LPPOMMUI. Should the *let the producer aware* principle is really heeded by producers, such cases would not have occurred. Based on the explanation above, thus this study aims to find out the implication of the *let the producer aware* principle for goods and services, and its development in consumer protection law in Indonesia and to find out the legal system of Indonesia adopt the *let the producer aware* principle in order to protect Indonesian consumers.

2. METHODS

The research method applied in this study is normative juridical approach. It is used to assess and examine the legal and economic aspects in the national economy, particularly the implication of the implementation of let the producer aware principle. Furthermore, the specification of the research is descriptive-analytical. The data obtained from the study of literature which is used as secondary data and then interviews were conducted to obtain primary data. Thus, the data were analyzed by juridical qualitative method.

3. RESULT AND DISCUSSION

As explained previously, this study aims to find out the implication of the *let the producer aware* principle for goods and services, and its development in consumer protection law in Indonesia and to find out the legal system of Indonesia adopt the *let the producer aware* principle in order to protect Indonesian consumers. Therefore, as a result of analysis, the following section is the discussion of the aims of the study.

The Implication Of The Practice Of Let The Producer Aware Principle By Producers Of Goods And Services, And Its Development In The Consumer Protection Law In Indonesia

The transactions conducted by producers have to be held liable. Legal expert or theorist defines it as "responsibility", the consideration of values and sense of social justice in general, through social and moral perspective (Saefullah, 1995).

History has shown that the loss suffered by consumers of goods or services, are often caused by the producers. Thus, it is justifiable that the consumers' rights activists demand that the producers be held liable and be given punishment. Several formal sources such as the legislation and standard agreement in civil law tend to limit the responsibility to be taken by the violator of consumers' rights. Law in general differentiates the liability principles into: liability based on fault, presumption of liability, presumption of non-liability, strict liability, and limitation of liability.

Specifically, for the presumption of liability principle, the accused party holds the obligation to prove otherwise. So the burden of proof is on the accused or the producers in this case. *Omkering van bewijslas* or reversed burden of proof is accepted in this situation. The Indonesian Consumer Protection Act adopts this reversed burden of proof, as regulated in Article 19, 22, and 23 of the Indonesian Consumer Protection Act. The fundamental mechanism of this reversed burden of proof principle is that the accused is considered guilty until he could prove otherwise. This is a direct opposite to the principle presumption of innocence adopted by criminal law. However, considering the nature of consumers' rights violation cases, the implementation of the reversed burden of proof is quite relevant. Thus, the producers have the weight to provide evidence of his innocence. This, however, does not mean that consumers could freely file lawsuits on producers on their will. The consumers could be accused back the producers if they fail to prove the guilt of the producers. This principle is in line with the development of *let the buyer aware* into *let the producer aware* that puts the emphasis of legal consideration on consumer protection.

As explained before, the rapid development of industrial technology has

implicated to a more complex economic system, which, as a consequence, demands a change of legal construction on the interaction of consumers and producers. The change in legal construction is marked with a paradigmatic shift of the interaction between consumers and producers, which replaces the *let the buyer aware* principle with *let the producer aware* principle. In other words, the paradigmatic shift is a change of priority in liability. If the consumers are the one liable to their own safety and security before, now the liability is for the producers to hold. Based on such principle, the producers should ensure the safety of their products before marketing them. However, there are still numerous accounts of careless practices by producers that disregard the principle. Such is shown by cases of hidden defects being found in products, or even false "Halal" labeling on products possessing no actual certificate from LPPOM MUI. Should the *let the producer aware* principle is really heeded by producers, such cases would not have occurred.

In the opinion of the writer, the implication and the implementation of the *let the producer aware* principle in Indonesia is still weak. First of all, this caused by Indonesian consumers' opinions are still regarded as less important than producers'. This unequal position sometimes causes producers to act as they wish without heeding the law. The writer of this research also finds that the producers in Indonesia have weak awareness when it comes to consumer protection. The most familiar example would be the false "Halal" labeling on a product when it has not been officially registered to LPPOM MUI. Apart from this example, there have been instances pointing to the fact that some business owners are not heeding the *let the producer aware* principle. This is really a contrast with the consumer protection in the U.S. who holds the *let the producer aware* principle high.

The Adoption Of Let The Producer Aware Principle By The Legal System Of Indonesia In Order To Protect Consumers

The doctrine of *let the buyer aware* (Let the Buyer Beware) is the embryo of conflict between products and consumers. This doctrine assumes that producers and consumers are two parties occupying equal and balanced position, making protection for consumers unnecessary. However, in the latter development,

consumers who have limited access of information get very little information on the goods and services they purchase, made worse by the withholding of information by the producers. In the end, consumers are dictated by producers. If consumers suffer from loss, it would be due to their own carelessness. This *let the buyer aware* doctrine is then opposed by Consumerist movements. By the implementation of the Indonesian Consumer Protection Act, this tendency on *let the buyer aware* has slowly shifted towards *let the producer aware* (Let the Seller Beware) (Garner, 1999).

Later on, the doctrine dictates that producers are obliged to be careful in producing and marketing their goods and services. As long as they are careful, they cannot be held liable for any future problems concerning consumers. If inspected using *a-contrario*, when suing the producers, consumers are weighed with the task to prove that producers are negligent.

Based on the literature and the burden of proof, it is clear that the accuser (consumer) has to provide evidences. The accused party (producer) could then just wait for the evidences. After the evidences have been laid out, the producer is then allowed to defend themselves by giving contra evidences pointing to lack of negligence in the production process.

Generally, Indonesian law assigns the burden of proof to the accuser. Article number 1865 KUH of Civil Law strictly regulates that any accusing party is obliged to provide relevant evidences. This Article is applied to civil cases where consumers are filing claims based on a breach of contract (*wanprestasi*) or a negligence of rule (*perbuatan melawan hukum*).

In reality, it is difficult for consumers to provide evidences in order to strengthen the lawsuit. On the other hand, producers are economically, politically, and socially more superior than the consumers, making it easier for them to deny accusation. Thus, the general burden of proof has its weakness. This is why when it comes to consumer protection, the reversed burden of proof principle is utilized. Article 22 of Indonesian Consumer Protection Act also adopts this reversed principle on criminal cases, or on the proving of guilt in lawsuit for compensation filed by consumers as referred by Article number 28 of Indonesian Consumer Protection Act. Both these articles employ reversed burden of

proof, since Article 163 of HIR jo A283R Bg jo Article 1865 KUH of Civil Law reads:

"Whoever claims to possess a right or wish to use an event as a basis of argument to confirm his own rights or to deny another party's rights, has to be able to prove the aforementioned right or event"

The legal consequence of this reversed burden of proof makes the burden of proof and the responsibility to deny accusation shifted to the producers. The Indonesian Consumer Protection Act adopts the principle of liability based on fault, utilizing the reversed burden of proof. This principle ensures protection for both parties, since it proportionally distributes the weight to both parties. For consumers, to prove the concrete loss suffered, while producer has to prove their innocence. In the opinion of the writer, the reversed burden of proof principle adopted by Indonesian Consumer Protection Act is a concrete form of the *let the producer aware* principle since it mandates the producers to be careful in producing goods and services to the consumers.

4. CONCLUSIONS

Grounded by the result of analysis and the discussions of the implication of *let the producer aware* principle for goods and services, and its development in consumer protection law in Indonesia and the legal system of Indonesia adopt the *let the producer aware* principle in order to protect Indonesian consumers, therefore it can be concluded that the *let the producer aware* principle has not been practiced properly in Indonesia, since the opinions of the consumers are regarded to be of less importance than the business owners as producers. This unequal position is used by business owners to do as he please without heeding the rules. The research result shows that the awareness of the business owners in Indonesia on consumer protection is still weak. The adoption of *let the producer aware* in the legal system of Indonesia is shown through the Indonesian Consumer Protection Act's adoption of the fault liability principle, utilizing reversed burden of proof. Thus, both the consumers and producers protected, since it proportionally distributes the responsibility. For consumers, to show and prove that they suffer from loss caused by products of the producers; and for producers, to prove that there has been no negligence during production on their part.

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